

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KEITH MORRIS,

Plaintiff,

-V-

JULIE WOLCOTT,

Defendant.

22 Civ. 52 (PAE) (SN)

OPINION & ORDER

PAUL A. ENGELMAYER, District Judge:

Currently pending is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, from *pro se* plaintiff Keith Morris. Dkt. 1 (the “Petition”). After a jury trial in New York Supreme Court, New York County, Morris was convicted of second-degree assault, pursuant to N.Y. Penal Law § 120.05(12). *See id.* at 1. Morris raises two grounds for habeas relief: (1) the legal sufficiency and weight of the evidence supporting his conviction; and (2) that his sentence should be reduced in the interest of justice.

Before the Court is the April 10, 2023 Report and Recommendation of the Hon. Sarah Netburn, United States Magistrate Judge, recommending that the Court deny the Petition. Dkt. 25 (“Report”). The Court incorporates by reference the summary of the facts provided in the Report. For the following reasons, the Court adopts this recommendation.

DISCUSSION

In reviewing a Report and Recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). “To accept those portions of the report to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the

record.” *Ruiz v. Citibank, N.A.*, No. 10 Civ. 5950 (KPF), 2014 WL 4635575, at *2 (S.D.N.Y. Aug. 19, 2014) (quoting *King v. Greiner*, No. 02 Civ. 5810 (DLC), 2009 WL 2001439, at *4 (S.D.N.Y. July 8, 2009)); *see also, e.g., Wilds v. United Parcel Serv.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

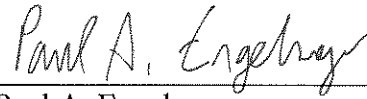
As no party has submitted objections to the Report, review for clear error is appropriate. Careful review of Judge Aaron’s thorough and well-reasoned Report reveals no facial error in its conclusions; the Report is therefore adopted in its entirety. Because the Report explicitly states that “failure to object within fourteen (14) days will result in a waiver of objections and will preclude appellate review,” Report at 10–11, the parties’ failure to object operates as a waiver of appellate review. *See Caidor v. Onondaga Cty.*, 517 F.3d 601, 604 (2d Cir. 2008) (citing *Small v. Sec’y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam)).

CONCLUSION

For the foregoing reasons, the Court denies the Petition. The Court respectfully directs the Clerk to terminate all pending motions, close this case, and mail a copy of this decision to plaintiff at the address on file.

The parties’ failure to file written objections, as noted in the Report, precludes appellate review of this decision. *See Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008); *Small v. Sec’y of Health & Hum. Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (per curiam). The Court therefore declines to issue a certificate of appealability, and certifies that any appeal from this order would not be taken in good faith; therefore, *in forma pauperis* status is denied for the purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 445 (1962).

SO ORDERED.

A handwritten signature in cursive script, reading "Paul A. Engelmayer", written in black ink above a horizontal line.

Paul A. Engelmayer
United States District Judge

Dated: May 1, 2023
New York, New York